





FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463


MEMORANDUM

TO: The Commission

FROM: Thomasenia P. Duncan
General Counsel


David Kolker 
Associate General Counsel

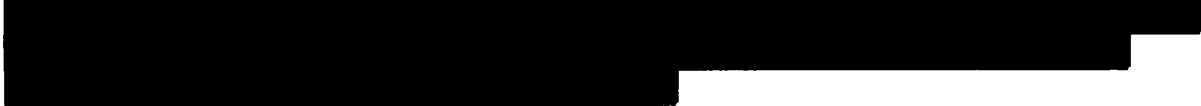
Kevin Deeley 
Assistant General Counsel

Steve N. Hajjar 
Attorney

SUBJECT: Pre-Litigation / MUR 5728 (Friends of Jack Orchulli)

RE: Recommendation to Take No Further Action

In light of the Supreme Court's decision in *Davis v. FEC*, 554 U.S. ___, No. 07-320, 2008 WL 2520527 (June 26, 2008), striking down the provisions of the Millionaires' Amendment that relate to certain House candidacies, the Office of General Counsel is recommending that the Commission take no further action in this matter and close the file. 



I. BACKGROUND

This matter arises from Jack Orchulli's 2004 campaign for the United States Senate for Connecticut. On April 6, 2006, the Commission found reason to believe that the Orchulli Committee violated 2 U.S.C. § 434(a)(6)(B)(iii) and 11 C.F.R. § 400.21(a) by failing to file an initial notification disclosing that Mr. Orchulli expended \$540,000 in personal funds (an amount that triggered the notification requirement), and 2 U.S.C. § 434(a)(6)(B)(iv) and 11 C.F.R. § 400.22(a) by failing to file three additional notifications following additional expenditures of personal funds, each in excess of \$10,000. On August 29, 2007, the Commission found probable

cause to believe that the respondents violated the same. The Commission authorized the General Counsel to file suit against the Orchulli Committee on December 7, 2007.

Following suit authorization, Mr. Orchulli retained counsel, engaged in additional negotiations, accepted our offer to recommend that the Commission settle the matter for \$90,000, and acceded to a conciliation agreement that included admissions of violations of 2 U.S.C. §§ 434(a)(6)(B)(iii) and (iv) as well as cease and desist language.

On June 26, 2008, however, the Supreme Court in *Davis v. FEC* struck down the Millionaires' Amendment provisions of the Act that govern certain self-financed candidacies for the House of Representatives, 2 U.S.C. §§ 319(a) and 319(b). [REDACTED]

II. DISCUSSION

In light of the Supreme Court's decision, we recommend that the Commission take no further action. The Court in *Davis* held that the Millionaires' Amendment provisions relating to House candidacies unconstitutionally burden the First Amendment rights of self-financed candidates. Although the Millionaires' Amendment provisions that govern the financing of Senate campaigns were not directly at issue in *Davis*, the Court's reasoning clearly suggests that the provisions violated by Mr. Orchulli, which "similarly regulate[] self-financed Senate bids." *Davis*, 2008 WL 2520527, at *3 n.4, are unconstitutional and unenforceable as well.

III. RECOMMENDATIONS

1. Take no further action.
2. Close the file.
3. Approve the appropriate letters.